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ATTORNEYS FOR PLAINTIFF
Dia C. Rianda

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

DIA C. RIANDA,

Plaintiff,

vs.

GOLDEN WEST SWIM CLUB; GOLDEN
WEST SWIM CLUB SUPPORT GROUP;
MARK SCHUBERT; and DOE 1 through
DOE 50, inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES

- 1) Wrongful Termination in Violation
of Public Policy**
- 2) Breach of Contract**
- 3) Retaliation**

[Amount in excess of \$25,000]

Plaintiff, DIA C. RIANDA, alleges:

GENERAL ALLEGATIONS

- 1) Plaintiff DIA C. RIANDA (plaintiff) is, and at all times relevant was, an adult female residing mainly in Orange County, California.

- 1 2) Plaintiff is informed and believes and on that basis alleges that defendant Golden West
2 Swim Club (GWSC) is, and at all relevant times was, a non-profit public benefit
3 corporation organized and existing under the laws of the State of California, with its
4 principal place of business in Orange County, California. At those times relevant herein,
5 GWSC was plaintiff's employer.
- 6 3) Plaintiff is informed and believes and on that basis alleges that defendant Golden West
7 Swim Club Support Group is, and at all relevant times was, a corporation organized and
8 existing under the laws of the State of California, with its principal place of business in
9 Orange County, California. At all times relevant, defendant Golden West Swim Club
10 Support Group owned and/or controlled defendant GWSC.
- 11 4) Plaintiff is informed and believes and on that basis alleges that defendant Mark Schubert
12 (Schubert) is, and at all relevant times was, an individual residing in Orange County,
13 California. At those times relevant herein Schubert was the Head Coach and Chief
14 Executive Officer (CEO) of defendant GWSC. He was also plaintiff's immediate
15 supervisor.
- 16 5) The true names and capacities of defendants named as Doe 1 through Doe 50, inclusive, are
17 presently unknown to plaintiff. Plaintiff will amend this complaint, setting forth the true
18 names and capacities of these fictitious defendants when they are ascertained. Plaintiff is
19 informed and believes and on that basis alleges that each of the fictitious defendants has
20 participated in the acts alleged in this complaint to have been done by the named
21 defendants.
- 22 6) Plaintiff is informed and believes and on that basis alleges that, at all relevant times, each of
23 defendants, whether named or fictitious, was the agent or employee of each of the other
24 defendants, and in doing the things alleged to have been done in the complaint, acted within
25 the scope of such agency or employment, or ratified the acts of the other.
- 26 7) The incidents that are the subject of this complaint, including plaintiff's hiring and firing,
27 took place in the County of Orange, State of California.

1 **ALLEGATIONS COMMON TO ALL CLAIMS**

- 2 8) This complaint tells a story that has become all-too-familiar in the USA Swimming world:
3 a legend in the coaching fraternity decides to go to great lengths to protect a fellow coach
4 in the face of clear, unequivocal concerns that the coach is behaving in a sexually
5 improper manner with young athletes placed under his control. Rather than deal with the
6 uncomfortable problem of having to discipline a long-standing assistant, the legendary
7 coach decides to deal with the problem by simply getting rid of the pesky complainant.
8 The moral is that if such events remain unchallenged, the truth-teller will inevitably
9 become a thing of the past, with the end result being a group of innocent children left to
10 suffer the consequences.

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12 **THE GOLDEN WEST SWIM CLUB (GWSC):**

- 13 9) The GWSC is/was a nonprofit, public benefit corporation organized under the laws of the
14 state of California on or about January 1, 1983. GWSC was formed through the merger of
15 two existing swim clubs: Fountain Valley Swim Team and Huntington Beach Swim Club.
16 10) The GWSC first operated under the Golden West College Community Services Division
17 as a member of the Sports Academy. However, since 1988, GWSC has functioned as an
18 independent nonprofit organization serving the greater Huntington Beach Community.
19 11) The Golden West Swim Club Support Group was incorporated under the laws of the state
20 of California on or about August 6, 1984. Plaintiff is informed and believes that Golden
21 West Swim Club Support Group owns, operates and/or controls the GWSC, and is
22 responsible for appointing and supervising GWSC's Head Coach and its officers and
23 directors. Plaintiff is informed and believes and on that basis alleges that the Board of
24 Directors of GWSC consists of members of the Golden West Swim Club Support Group.
25 12) The GWSC purports to offer a competitive swimming program for all ages and abilities.
26 All coaches and managers employed by (or volunteering to) GWSC are members of USA
27 Swimming; the National Governing Body for the sport of swimming in the United States.

1 All coaches, managers and volunteers working at GWSC are subject to the rules,
2 regulations and policies of USA Swimming, including, but not limited to, the USA
3 Swimming Code of Conduct and its Athlete Protection Policies. At all times relevant
4 herein, these rules include, *inter alia*, a *mandatory* sexual harassment, abuse and/or
5 molestation reporting requirement.

6 13) The GWSC Team Code of Conduct provides that GWSC, “Team members and staff will
7 refrain from any illegal or inappropriate behavior that would detract from a positive image
8 of the team or would be detrimental to its performance objectives.”

9 14) Consistent with the procedures, policies and rules promulgated by USA Swimming, as
10 well as the procedures, policies and rules adopted by GWSC, all coaches, managers and
11 volunteers employed by, or working on behalf of, GWSC had an affirmative obligation to
12 report any known or suspected improper conduct occurring between any GWSC coach,
13 manager or volunteer and any participating athlete to their immediate supervisor and/or
14 the Head Coach of GWSC (i.e. Schubert). Moreover, consistent with USA Swimming’s
15 Athlete Protection Policies, those responsible for the operations of GWSC, including its
16 Head Coach (Schubert), had an affirmative obligation to report to USA Swimming’s
17 Athlete Protection Officer and/or Director of Safe Sport any and all reports of any known
18 or suspected improper contact(s) between any GWSC coach, manager or volunteer and
19 any participating minor athlete.

20 21 **GWSC HEAD COACH AND CEO MARK SCHUBERT**

22 15) In early to middle 2011, GWSC’s Board of Directors retained defendant Mark Schubert as
23 GWSC’s Head Coach and CEO.

24 16) It would not be hyperbole to suggest that Mark Schubert is a legend in the swimming
25 community. Prior to his retention by GWSC, Schubert was a staff coach for at least eight
26 Olympic teams from 1980 to 2008, and was the Head Coach of the United States Olympic
27 Team in 2008 (in Beijing). Coach Schubert has personally coached no fewer than twenty-

1 six (26) Olympians including Janet Evans, Lenny Krazelburg, Brian Goodel, and Brad
2 Bridgewater. He coached for the Mission Viejo Nadadores, winning forty-nine (49)
3 National Championship Titles and also coached for the Mission Bay Makos winning nine
4 (9) National Team Titles. He was the Head Men's and Women's Swimming Coach for
5 University of Southern California, and was the Women's' Coach at the University of
6 Texas. His NCAA teams have won three (3) NCAA Team Championships and 49
7 Individual NCAA Titles. Coach Schubert was inducted in the International Swimming
8 Hall of Fame in 1997 as an Honor Coach. He has received "Coach of the Year" awards
9 from over five different swimming organizations.

10 17) Plaintiff is informed and believes and on that basis alleges that while Schubert was serving
11 as the Head Coach of USA Swimming and USA Swimming's National Team Director, he
12 was also directing, at least from a distance, the Fullerton Aquatics Swim Club ("FAST")
13 Elite Training Center funded by USA Swimming, from his position at USA Swimming.
14 Later the name was changed to the USOC Post Graduate Olympic Training Center and
15 funded through with USOC monies through USA Swimming. While working with FAST,
16 at least two events occurred that foreshadowed Schubert's subsequent refusal to properly
17 address plaintiff's legitimate complaints of improper coach/athlete interactions:

18 a) The first problem developed when Schubert recruited Coach Sean Hutchison, a
19 rising "star" in the swimming community. Hutchison was Schubert's assistant at the
20 Beijing Olympics in 2008 and was the head U.S. women's coach at the 2009
21 swimming world championships in Rome. Shortly after Hutchison's arrival at
22 FAST, Schubert discovered that Hutchison was engaged in an inappropriate sexual
23 relationship with at least one of the athletes he was coaching. Accordingly, after a
24 power struggle had occurred between the **coaches at FAST**, Schubert hired a private
25 investigator to conduct surveillance on Coach Hutchison. Ultimately, Schubert was
26 able to secure incriminating photographs and/or video which depicted Coach
27 Hutchison acting intimately with at least one of his swimmers. As opposed to
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1 turning this information over to the authorities or otherwise taking some sort of
2 action to ensure that this inappropriate behavior ended, Schubert, at least for the
3 time being, retained this incriminating evidence for what he referred to as
4 “insurance” to be used for his personal gain in the future.

5 b) The second problematic development at FAST involved Coach William Jewell. Due
6 to Schubert’s then existing relationship with USA Swimming, he was unable to
7 retain a formal position at FAST. As a consequence, Schubert worked behind the
8 scenes to secure Board approval to have his long-time friend William Jewell
9 appointed as FAST’S CEO. Soon thereafter, parents and coaches began
10 complaining that Coach Jewell was having improper physical contacts with some of
11 FAST’s young female swimmers. In particular, Coach Jewell was observed
12 improperly touching the girls and providing them with “massages” in clear violation
13 of USA Swimming’s Code of Conduct. Additionally, Coach Jewell was overheard
14 making a series of inappropriate sexual comments on the pool deck and at travel
15 meets. Schubert was told of Jewell’s improper behavior, including from the family
16 of a 2012 Olympic gold medal winner, but once again he did nothing. Ultimately
17 the complaints overwhelmed the FAST Board. It was clear that they could no longer
18 be “swept under the rug”. Jewell ultimately was forced out of FAST. Undeterred,
19 Schubert later brought Jewell back to the pool deck as a GWSC coach (despite the
20 known existence of a pending USA Swimming investigation into Coach Jewell’s
21 wrongful interaction with young female swimmers).

22 18) Plaintiff is informed and believes and on that basis alleges that in 2010, a dispute
23 developed between Schubert and USA Swimming. It is believed that Schubert wanted
24 USA Swimming to provide additional funds for coaches and elite programs he was
25 operating and/or organizing in Southern California (including the FAST program). Others
26 at USA Swimming were not happy about this and pressured USA Swimming to defund
27 Coach Schubert's “Centers of Excellence.”

- 1 19) Eventually, USA Swimming decided, after placing him on suspension, to relieve Schubert
2 from his duties with the national team in November of 2010. By all accounts, USA
3 Swimming had every reason to terminate Schubert due to recent instances of irrational
4 and abusive behavior that he exhibited to his swimmers, particularly during the Pan
5 Pacific Championships in August of 2010.
- 6 20) Plaintiff is informed and believes and on that basis alleges that following his dismissal,
7 Coach Schubert decided to pursue litigation against USA Swimming arising from his
8 national team dismissal. Negotiations between Schubert and USA Swimming began in
9 approximately early December of 2010. Initially, USA Swimming employed a hard line
10 stance with Schubert and his attorney as it maintained that it was perfectly justified to
11 terminate Schubert and that the employment claim was otherwise meritless. USA
12 Swimming was prepared to dig its heels into the ground and fight Schubert every step of
13 the way in order to defend its conduct.
- 14 21) In order to leverage the amount of any compensation that he would receive from USA
15 Swimming, Schubert decided to cash in on his “insurance policy” in the form of the
16 incriminating information that he had in his possession concerning Coach Hutchison.
17 Schubert knew that USA Swimming, then embroiled in the midst of a sex abuse scandal,
18 would be highly motivated to conceal from public scrutiny certain information about a
19 high profile coach, i.e. Coach Hutchison, who had been involved in sexual misconduct.
20 Thus, Schubert surreptitiously leaked some of the information he had concerning Coach
21 Hutchison to a nationally known sports writer named Amy Shipley of the Washington
22 Post in or about December of 2010. Ms. Shipley subsequently published an article about
23 Coach Hutchison’s sexual misconduct on or about December 30, 2010. The story stunned
24 the USA Swimming community. Yet another black eye was levied against the leaders of
25 USA Swimming and a revolt was brewing. The full story involving Coach Hutchison, if
26 revealed, would cause many “heads to roll” of some of the most powerful leaders of USA
27 Swimming. Schubert succeeded in getting USA Swimming’s attention. The following
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1 implied message was sent: "This is just the beginning. Pay me what I want and no further
2 information gets leaked".

3 22) During this time, Schubert (and his wife) became close to plaintiff, who they sought out
4 for emotional, physical and financial support during this trying time. In fact, at one point
5 during this time period Schubert and plaintiff had a heart-to-heart discussion concerning
6 the widespread problem within USA Swimming of coaches sexually abusing minor
7 athlete swimmers. Plaintiff confided in Schubert that this was a problem she took
8 extremely seriously. Schubert then confided that in the 1980's he learned that a swim
9 coach named Rick Curl was sexually abusing an athlete and that the swimmer developed
10 an eating disorder and other emotional problems. Plaintiff asked him what he did for her
11 and he responded that he did nothing since her problems were "too big" and it would take
12 away from the team so he decided not to help her in the interest of the other swimmers.
13 Schubert confessed, "I feel so guilty that I did not help her, when she asked me for help."
14 Stunned, plaintiff asked him why didn't you go to law enforcement or child protective
15 services, to which Schubert replied, "it was too late, the statute of limitations had run out,
16 I didn't know what to do, but I told Chuck Wielgus [Executive Director in late 2010 of
17 USA Swimming]. I asked him what he was going to do about Rick Curl." Plaintiff then
18 pleaded with Schubert to do the right thing and report it to law enforcement immediately.
19 With resignation, Schubert responded, "I tried, but they [USA Swimming and Chuck
20 Wielgus] wouldn't listen."¹

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24 ¹ Kelley Currin began swimming for Rick Curl in 1981 when she was 13 years old. She continued swimming for him until
25 1988. Plaintiff is informed and believes and on that basis alleges that beginning in 1982, and continuing up through 1987, Ms.
26 Currin was sexually abused by Coach Curl. In August of 1988, Ms. Currin was released from the hospital, where she was
27 treated for depression and an eating disorder related to the sexual abuse perpetrated by Curl. Defendant Mark Schubert began
28 coaching Ms. Currin at the University of Texas in the fall of 1988. Ms. Currin expressly informed Schubert that she had
recently been in the hospital due to the sexual abuse committed by Coach Curl. Schubert, on information and belief, did
nothing in response to this information: he made no effort to advise Currin's parents or the authorities of Currin's abuse;
nothing was done to prevent Curl from having further access to other vulnerable swimmers. The only action believed to have

23) Soon after the Washington Post article rocked the swimming world, USA Swimming quickly retreated from its previously intractable legal position and quickly- and more importantly quietly- started negotiating with Schubert on his employment claim. Eventually Schubert received a whopping \$625,000 in settlement with USA Swimming, of which \$500,000 served as compensation for a tort claim and therefore Schubert was not obligated to pay taxes on these monies. In exchange, Schubert agreed to give up any further service with the national team staff (as well as any potential service with the USA Swimming Board of Directors). Most importantly, in exchange for these monies, Schubert entered into a “confidentiality agreement” whereby he promised that he would not make public any further information that he possessed concerning the affairs at FAST, including instances of sexual misconduct by Coach Hutchison. Further, USA Swimming made Schubert promise, in exchange for these monies, that he would not publicly speak about any sexual abuse issues in general, including what he knew about Kelley Currin, Rick Curl and USA Swimming’s knowledge of same. For a the price of \$625,000, therefore, Coach Schubert was effectively silenced and further information, including the incriminating photographs which he had in his possession depicting Coach Hutchison, were kept under lock and key in Coach Schubert’s safe.

24) Not surprisingly, at or about this time, the allegations concerning Coach Hutchison were “swept under the rug.” USA Swimming proudly announced on February 14, 2011 that it had “fully investigated” the charges into Coach Hutchison and publicly cleared him of any wrongdoing. Thus, Coach Hutchison maintained his USA Swimming membership in good standing and was allowed to continue

been taken by Schubert in response to this information was to apprise Chuck Wielgus (the Executive Director of USA Swimming). It is believed that Schubert provided information to USA Swimming concerning coach Curl's abuse on at least three (3) separate occasions. USA Swimming is believed to have done absolutely nothing in response to this information despite having a clear duty to act consistent with then existing USA Swimming rules and regulations.

1 coaching and having unfettered access to minor swimmers. However, Coach
2 Hutchison mysteriously left FAST and is now coaching at various parts of the
3 country, including the State of Washington where he **currently** is the Director of
4 King Aquatics. This method of covering up and relocating swim coaches was not
5 unique in the USA Swimming world as similar action had previously been taken
6 with other notable coaches such as former National Team Director Everett
7 Uchiyama and Aaron Bartleson.

8 **PLAINTIFF IS HIRED BY SCHUBERT AS A GWSC SWIM COACH AND**
9 **MANAGER:**

- 10 25) While Coach Schubert dealing with personal issues, including his ongoing legal dispute
11 with USA Swimming, plaintiff was asked by Schubert (and his wife) to assist Schubert
12 with various personal matters. Although still residing in northern California, plaintiff
13 agreed to help Schubert.
- 14 26) Plaintiff is informed and believes and on that basis alleges that in or about early 2011, the
15 **Schubert asked the Golden West Board** to serve as a GWSC “volunteer” coach pending
16 resolution of this legal dispute with USA Swimming (with the understanding that he
17 would be compensated retroactively upon final settlement with USA Swimming).
- 18 27) Soon thereafter, in or about July 2011, Schubert was formally retained by GWSC. He was
19 given the position of team Head Coach and named GWSC’s Chief Executive Officer
20 (CEO).
- 21 28) **In the spring of 2011**, Schubert asked plaintiff to come to Southern California and assist
22 him in the management of the GWSC. Plaintiff agreed. Upon arrival in Southern
23 California, plaintiff’s duties “assisting” Schubert ultimately included, *inter alia*: 1)
24 handling all GWSC affairs when Schubert was absent; 2) dealing with complex
25 organizational matters; 3) updating the club’s human resource protocols and generally
26 handling staff hiring matters; 4) mentoring newly retained coaches; 5) construction of an
27 age group and feeder swim program; and 6) develop and enlarge the club’s master

1 swimming program. Schubert enticed plaintiff to help him in Southern California with the
2 plea, "I can't do it without you. "

3 29) One of plaintiff's first duty in the summer of 2011 was to salvage a swim camp that
4 Schubert had agreed to run. In so doing plaintiff had to, prepare promotional literature,
5 recruit swimmers, donate financial resources, and generally dedicate time necessary to
6 make the camp a success without pay or compensation.

7 30) After a great deal of encouragement by Schubert, plaintiff ultimately agreed to move to
8 Southern California so that she could work full-time for Shubert and GWSC. She did this
9 leaving her family behind in Northern California.

10 31) When plaintiff first started "assisting" Schubert, she had an oral understanding with him
11 that she would be a lawful partner in whatever endeavor or opportunity came his way
12 when he recovered from his emotional and physical problems related to his ongoing
13 dispute with USA Swimming. It was initially envisioned that plaintiff would split time
14 between Northern and Southern California. However, it soon became clear that plaintiff's
15 duties were such that she could no longer continue commuting from Northern California
16 (and could no longer continue her coaching duties with teams in Northern California). It
17 was ultimately agreed that she should move to Southern California and dedicate herself
18 full-time to Schubert and GWSC. She then became a Head Age Group Coach managing
19 day to day coaching operations of the Age Group Program, Master's Program, Pathways
20 "Lesson" Program, and Swim4Me program. She was left with the complete task of
21 setting up a web based team management infrastructure and swims database for the team
22 which had more than doubled in size since she came to Golden West Swim Club. She also
23 invested much time in developing a business plan and business concept for an Aquatic
24 Center in Huntington Beach.

1 32) In or about July 2011, plaintiff entered into an oral employment agreement with Schubert
2 (in his position as GWSC Head Coach (and CEO)).² Pursuant to the terms of plaintiff's
3 oral agreement, plaintiff agreed to leave her job and home in northern California and
4 move to Southern California so that she could dedicate her full-time effort to the
5 management of GWSC (as well as various coaching duties for GWSC). In exchange, it
6 was agreed that plaintiff would receive a starting compensation of \$30,000 per year along
7 with a quarterly performance bonus. As per the oral agreement it was agreed that year 1's
8 salary would just cover expenses related to housing expenses, but that upon successful
9 growth of GWSC she would be fairly compensated for her time. Finally, in light of
10 plaintiff's decision to move to Southern California, she needed an assurance of continued
11 employment. Accordingly, Schubert agreed that plaintiff would not be terminated by
12 GWSC without good cause.

13 33) Plaintiff was given the formal job titles of: 1) General Team Manager; 2) Head Age Group
14 Coach; and 3) Age Group Gold Level Coach. 4) Associate Senior Coach

15 34) In or about JULY 2011, plaintiff purchased a new home in Orange County, California.

16 35) Plaintiff's job performance at GWSC was excellent. Her "Gold Group" consistently
17 improved their times and she was responsible for developing Nationally and LSC "top
18 ten" ranked age group athletes and **doubled the number of Junior Olympic qualifiers.**
19 Moreover, due to Schubert's continued absence, she was effectively required to run the
20 day-to-day operations of GWSC.

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26 ² Pursuant to the GWSC by-laws, Schubert, as the GWSC Head Coach and CEO, had exclusive authority to hire GWSC's
27 assistant coaches and staff and determine their powers, duties and compensation. (See Article 9, subparagraph 9.9, Bylaws,
28 Golden West Swim Club.)

36) By all accounts plaintiff performed her job duties admirably and in a professional manner. At no time during her employment with GWSC was plaintiff ever subject to a negative job performance evaluation, nor was she ever subject to any discipline.

PLAINTIFF REPEATEDLY ADVISES SCHUBERT THAT COACH JEWELL IS BEHAVING IMPROPERLY WITH UNDERAGE FEMALE SWIMMERS PLACED UNDER HIS CONTROL:

37) As previously noted, when Schubert assumed control of GWSC, he asked his longtime friend, William Jewell, to work as an assistant coach at GWSC. Jewell agreed and, in or about July 2011, he was appointed GWSC's Volunteer "Assistant Senior Elite Coach."

38) Pursuant to GWSC's bylaws (as well as its organizational structure), Jewell worked under the direct supervision of Schubert.

39) When Jewell was asked by Schubert to come coach at GWSC, Schubert was fully aware that Jewell remained subject to a formal USA Swimming investigation concerning his improper interactions with young female swimmers while coaching at FAST. Schubert decided to go ahead and place Jewell in charge of various female swimmers at GWSC despite this pre-existing knowledge.

40) When Jewell began coaching at GWSC, it soon became obvious that his retention was a serious mistake. From the inception of his employment, Jewell was seen behaving in an improper manner vis-à-vis the minor female athletes at the GWSC pool. Jewell's inappropriate conduct included:

- a) The physical touching of the young female swimmers in an inappropriate (if not unlawful) manner;
- b) Providing physical "massages" on young female swimmers while they sat pool-side between his legs;
- c) Allowing young female swimmers to sit on his lap;
- d) Improper sexual innuendo directed at his young swimmers;
- e) Constant use of profanity;

- 1 f) Meeting alone with his female swimmers.
- 2 41) After observing much of the above described conduct, and after fielding a series of
- 3 complaints from club coaches, plaintiff met with Schubert and told him that something
- 4 needed to be done about Jewell's behavior.
- 5 42) Schubert ignored plaintiff's concerns. There was no investigation, follow-up or sanction.
- 6 Instead, Schubert simply kept matters to himself; he failed to report this information to his
- 7 Board, USA Swimming or any of the affected parents.
- 8 43) Jewell's inappropriate behavior continued. At one point he was discovered sitting in his
- 9 vehicle with a young swimmer in the front seat. He was further seen walking through the
- 10 parking lot with his arm around the back of at least two female swimmers. In addition, it
- 11 was learned that both Schubert and Jewell were providing unauthorized car rides to
- 12 swimmers in violation of USA Swimming and GWSC rules.
- 13 44) Plaintiff reiterated her complaints to Schubert, noting that Jewell's behavior was in clear
- 14 violation of the USA Swimming's Code of Conduct. Concerned with the safety and well-
- 15 being of GWSC's swimmers, plaintiff told Schubert that he should, *at a minimum*, restrict
- 16 Jewell from having any further contact with any female swimmers pending a thorough
- 17 investigation of her complaints. Schubert reassured the entire coaching staff that he had
- 18 control over the situation, demanded that he be verbally consulted and no more written
- 19 emails or documentation be created concerning Jewell's behavior or any employee for
- 20 that matter. Schubert also emphasized that he was responsible for Jewell and would
- 21 remedy the situation. Jewell then disappeared from the GWSC club coaching and was
- 22 now coaching the college swimming exclusively in Jan-April of 2012. During this time,
- 23 Jewell was exclusively under Schubert's control and supervision and had nothing to do
- 24 with USA Swimming or Golden West Swim Club. GWSC coaches assumed he had been
- 25 reassigned. Plaintiff was told he was removed from GWSC coaching until the
- 26 investigations and lawsuit Jewell had with FAST had cleared
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1 45) Despite plaintiff's repeated protestations, Schubert insisted that Jewell was innocent of any
2 wrongdoing. Plaintiff responded that she personally observed much of his improper
3 behavior herself, and that even if Schubert was skeptical, prudence dictated that he
4 instruct Jewell to avoid further contact with the club's female swimmers pending
5 resolution of USA Swimming's investigation. Angered, Schubert told plaintiff to leave
6 matters alone. Plaintiff responded:

7 This has nothing to do with me. I like Bill [Jewell], I just don't want him touching
8 the girls for any reason, meeting with them alone or cursing. I want him and all of
9 us to follow the USA Swimming rules. The rules are there for the right reasons to
10 protect kids and to protect coaches from unfair allegations. Follow the rules and
11 no one gets hurt.

12 46) Eventually Schubert advised plaintiff that he would ask Jewell to suspend his coaching
13 duties pending clearance from USA Swimming.

14 47) Shortly thereafter plaintiff discovered Jewell on the pool deck, once again coaching the
15 club's female athletes. Plaintiff reported this to Schubert, who advised that Jewell had
16 been "cleared" and was "fully exonerated" by USA Swimming.

17 48) Unconvinced, plaintiff contacted USA Swimming for the purpose of ascertaining the status
18 of the investigation as well as to lodge her own complaint concerning Jewell's conduct at
19 GWSC. Specifically, she spoke with Executive Director Chuck Wielgus, who did nothing
20 other than to refer her to an "Athlete Protection Officer" named Susan Woessner, who
21 advised that, contrary to what Schubert represented, Jewell, after well over a year, was
22 still under investigation and in any instance had not been "exonerated". Schubert had
23 lied.

24 49) During this time-frame, Jewell's wrongful behavior **once again** continued. He was seen
25 pulling certain girls out of practice with his hands on their waists shifting them, and with
26 his body next to, and behind, them, presumably demonstrating "stroke technique."

27 50) Plaintiff and others were not happy with this, so she once again complained to Schubert.
28 Schubert remained unmoved and sought to justify Jewell's behavior by noting,

1 remarkably, that Jewell was touching athletes in a manner consistent with USA
2 Swimming's rules. According to Schubert, Jewell was fully within his rights in touching
3 and massaging his athletes, that this was accepted **practice of swim coaches and endorsed**
4 **and demonstrated by those at the top of USA Swimming.** He also told plaintiff that the
5 **new rules were stupid and ridiculous.**

6 51) Convinced that her oral protestations had not gotten through to Schubert, on or about June
7 18, 2012, plaintiff sent Schubert an e-mail stating:

8 One thing to think about as investigation is going on of Bill Jewell....if he comes
9 up uncleared [sic] and is banned....you will look very bad for bringing him back.
10 They did not give any indication he is cleared, in fact he is still being investigated.
11 Of course he can work, the onus, negligence, and responsibility is on "you" and
12 the club and the officers of the club if something happens or an athlete becomes
13 offended at his touching of them or texting or personal contact. The officers of the
14 club to my knowledge have not been told the truth about his absence. If he goes
15 down the whole club goes down. Please do not forget that you were confronted by
16 the coaching staff a while ago about perceived or what could be perceived as
17 inappropriate behavior by Mr. Jewell before any of this stuff ever came up with
18 FAST. If they are brought in to testify for any reason, the truth will vet itself out.
19 This will not make you look good.

20 As you can tell, I am very uncomfortable with this. VERY.....and as usual you are
21 not going to heed my advice or listen.

22 I am asking you in writing "to cover my own ass" to do the RIGHT THING here.
23 He can come back when in fact he has been cleared. I am strongly advising you
24 not to have him in a position where he is texting, providing personal information,
25 or touching in "any manner" minor athletes.

26 I have been advised by my attorney to write this letter to you. Look I care about
27 you but I will not be an accessory to a poor decision.

28 52) Plaintiff is informed and believes and on that basis alleges that Schubert was angered with
plaintiff's decision to put her complaint in writing. In fact, after sending the above-
referenced **e-mail, and her email and phone calls to USA Swimming,** plaintiff was called
into Schubert's office and threatened that her future **at GWSC as a coach would be**

1 destroyed if she continued to question Jewell's behavior.“ How could you go to USA
2 Swimming?” Schubert yelled. Schubert advised plaintiff that he needed Jewell to help
3 cover practices. After calming down, Schubert told plaintiff that he would deal with
4 Jewell after the “USA Swimming Olympic Trials” in Omaha Nebraska.” When plaintiff
5 questioned the propriety of continuing to leave Jewell alone with young kids, Schubert
6 responded, "I'm giving Bill [Jewell] a chance," "my decision is final."

7 53) While at swim trials, plaintiff discovered, and reported to Schubert, that at least one
8 underage swimmer had been seen drinking alcohol. Schubert sought to defend this
9 behavior by questioning the drinking age of the state where swim trials were taking place.
10 It is believed that nothing was done by Schubert with respect to this incident.

11 54) A few days later plaintiff received an e-mail from a parent wherein she was advised that a
12 12-year-old member of the GWSC team was asked by Jewell to cheat in a relay (by
13 improperly impersonating another swimmer who failed to show up). Fortunately, the
14 swimmer's parent refused to allow her daughter to cheat, fearing that she would be
15 disqualified thereby jeopardizing her future swimming prospects. Plaintiff reported this
16 incident to Schubert.

17 55) Thereafter, plaintiff received complaints that most of the senior girls were now wearing
18 bikinis at swim practice while she and Schubert were gone at the “USA Swimming
19 Olympic Trials”. This was wholly unacceptable (and a clear violation Schubert’s own
20 policies and Club rules). Plaintiff discovered that Jewell unilaterally authorized this
21 behavior and instructed athletes not to tell Schubert or Rianda.

22 56) Plaintiff once again complained to Schubert. However, as with her earlier complaints,
23 nothing was done in response to Jewell’s ongoing wrongful conduct. Instead - It soon
24 became clear - Schubert decided to address this ongoing problem by simply getting rid of
25 the messenger.

1 57) On or about July 11, 2012, Schubert formally terminated plaintiff's employment with
2 GWSC. Schubert's only explanation for terminating plaintiff was the suggestion that, "I
3 am not happy and you are not happy, it is time for you to leave."

4 58) It was made clear to plaintiff that the only reason her employment was terminated was due
5 to her complaints to Schubert and then USA Swimming concerning Coach Jewell's
6 unlawful, wrongful and inappropriate conduct.

7
8 **FIRST CAUSE OF ACTION**

9 (Wrongful Termination In Violation Of Public Policy)

10 59) Plaintiff re-alleges and incorporates by reference and every allegation contained in
11 paragraphs 1 through 58 as if fully set forth herein.

12 60) The above-described conduct of defendants, and each of them, constitutes wrongful
13 employment retaliation and wrongful termination of plaintiff in violation of public policy.

14 61) The above-described conduct of defendants, and each of them, constitutes a violation of
15 California Labor Code section 6310, which prohibits an employer from terminating an
16 employee because she "has made a bona fide oral or written complaint ... of unsafe
17 working conditions, or work practices, in his or her employment or place of employment."

18 62) As a result of defendants' wrongful termination of her, plaintiff has suffered and continues
19 to suffer damages, in the form of lost wages and other employment benefits, and severe
20 emotional and physical distress, the exact amount of which will be proven at trial.

21 WHEREFORE, plaintiff prays for relief as set forth herein.

22 **SECOND CAUSE OF ACTION**

23 (Breach of Employment Contract)

24 63) Plaintiff re-alleges and incorporates by reference each and every allegation contained in
25 paragraphs 1 through 62 as if fully set forth herein.
26
27
28

64) In July 2011, plaintiff entered into an oral employment agreement with defendants whereby defendants agreed, *inter alia*, that (a) plaintiff would not be demoted, discharged or otherwise disciplined except for good cause and with notice and an opportunity to be heard; and (b) plaintiff would be evaluated in a fair and objective manner and afforded progressive discipline.

65) This oral employment agreement was evidenced in various written documents, including but not limited to defendants personnel policies and procedures.

66) Plaintiff duly performed all conditions, covenants and promises under the agreement to be performed on her part. Plaintiff has at all times been ready, willing and able to perform all of the conditions of the agreement to be performed by her.

67) As a result of the above-described conduct, defendants breached their agreement with plaintiff by subjecting plaintiff to arbitrary and unfair evaluations and wrongfully terminating her without good cause and an opportunity to be heard.

68) As a result of defendants' breach of contract, plaintiff has suffered and continues to suffer damages, in the form of lost wages and other employment benefits, the exact amount of which will be proven at trial.

WHEREFORE, plaintiff prays for relief as set forth herein.

THIRD CAUSE OF ACTION

(Retaliation)

69) Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 68 as if fully set forth herein.

70) Plaintiff consistently opposed Jewell's above-described unlawful, wrongful and offensive conduct, by repeatedly complaining to her immediate supervisor, Schubert, concerning such conduct.

71) Defendants terminated plaintiff's employment in retaliation for her complaints regarding such behavior.

72) The above-described conduct of defendants, and each of them, constitutes a violation of California Labor Code section 6310, which prohibits an employer from terminating an employee because she “has made a bona fide oral or written complaint ... of unsafe working conditions, or work practices, in his or her employment or place of employment.”

73) As a result of defendants’ retaliation against her, plaintiff has suffered and continues to suffer damages, in the form of lost wages and other employment benefits, and severe emotional and physical distress, the exact amount of which will be proven at trial.

74) Defendants and each of them acted for the purpose of causing plaintiff to suffer financial loss and severe emotional distress and physical distress and are guilty of oppression and malice, justifying an award of exemplary and punitive damages.

WHEREFORE, plaintiff prays for relief as set forth herein.

PRAYER

WHEREFORE, plaintiff prays for judgment as against all defendants as follows:

1. For compensatory damages according to proof and prejudgment interest thereon to the extent allowable by law;
2. For exemplary and punitive damages according to proof;
3. For attorney fees on the third cause of action;
4. For costs of suit; and
5. For such other and further relief as the court may deem proper.

Dated: September 17, 2012

CORSIGLIA McMAHON & ALLARD, LLP

By: _____
B. ROBERT ALLARD
Attorneys for Plaintiff
DIA C. RIANDA